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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,985	10/19/2001	John H. Schneider	ITW-13111	5951
7590 10/03/2005 DENNIS M. FLSHERTY, ESQ. OSTRAGER CHONG FAHERTY & BROITMAN P. C. 250 PARK ANENUE SUITE 825 NEW YORK, NY 10177-0899			EXAMINER TRUONG, THANH K	
			ART UNIT 3721	PAPER NUMBER

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

<b>Office Action Summary</b>	Application No. 10/042,985	Applicant(s) SCHNEIDER ET AL.	
	Examiner Thanh K. Truong	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☐ This action is FINAL.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,5-11,13,14,16-22,49,52 and 54 is/are pending in the application.
- 4a) Of the above claim(s) 12,23,51 and 53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-11,13,14,16-22,49,52 and 54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 9, 2005 has been entered.
2. Applicant's cancellation of claims 2, 4, 15, 24-48, 50, and 55-57 is acknowledged.
3. Applicant's election without traverse of Species 1, the embodiment shown in Figures 1 and 2; claims 1-11, 13-22, 33, 40-50, 52, 54 and 55, in Paper No. 7 is acknowledged.
4. Claims 12, 23, 51 and 53 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable genetic or linking claim. Election was made **without** traverse in Paper No. 7.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3, 5-11, 13, 14, 16-22, 49, 52 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strand et al. (6,360,513) in view of H. J. Keller (3,255,869) or Deutschländer (4,147,583) or Kopp et al. (5,371,997).

Strand discloses a package (figures 3 & 5) comprising: a receptacle having a mouth at an upper end; a flexible zipper (20) attached to the mouth and comprising first and second fastener strips; a slider (20a) movably mounted to the zipper for alternately opening or closing portions of the first and second fastener strips, the slider having a top and bottom; and a header (11) enclosing the zipper and the slider; the enclosed header comprises first and second side edges and first and second walls each extending from the first side edge to the second side edge; the side edges comprising a first and second tear notches (24) formed therein, the first tear notch comprising a termination point disposed at a first elevation that is at or higher than an elevation of the top of the slider, header comprising the line of weakness (12) having a straight portion extending across the header at a second elevation that is lower than an elevation of the bottom of the slider (figure 5), the first wall of the header further comprising a first line of weakness (13) traversing a range of elevations encompassing the first and second elevation (figure 5).

Strand further discloses: the first and second header walls are sealed together, the first and second header walls are respectively integrally formed with opposing walls of the receptacle (15 of figure 10); and the first elevation is above a top of the slider and the second elevation is below a bottom of the slider (figures 3 and 5).

Strand discloses the claimed invention, but does not expressly disclose that the second line of weakness 13 is a slit.

Keller ('869) discloses a receptacle (10) comprising the series of the slits (14) (line of weakness or line of perforation across the top of the receptacle) to provide means to help the consumers to easily remove the top portion of the receptacle (column 2, lines 57-63).

Deutschländer ('583) discloses slit (24, 24') on a receptacle (11) to facilitate the tearing-open of the transverse seam (column 1, lines 33-34).

Kopp ('997) discloses slit (9, 9', 29, 39) on packaging bag (1) providing a tear-open slit for aiding in initiating the tearing of the package (column 1, lines 17-19).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Strand's line weakness (13) by a slit as taught by Keller ('869) or Deutschländer ('583) or Kopp ('997) to provide a means to assist and to facilitate a manual tearing-opening and the removal of the portion of the receptacle (create an opening and providing access to the interior of the receptacle).

Moreover, it appears that Strand's package would perform equally well with the lines of weakness (13), for providing an easy way to open the package when the consumer tries to tear the header open. Accordingly, the use of the slit (20) in the present claimed invention is deemed to be a design consideration, which fails to patentably distinguish over the prior art of Strand.

Furthermore, the lines of weakness (13) comprises a point located both laterally and elevationally near the termination point of the first tear notch, the lines of weakness (13) and the tear notch becoming connected when a portion of the first wall of the header disposed therebetween is torn (figure 5).

Strand further discloses: the first lines of weakness (13) is inclined at an angle in a range of 30 to 90 degrees relative to a line of the zipper (20), and the lower point of the first lines of weakness (13) being further away from the closest one of the first and second side edges than is the upper point of the first lines of weakness (13); and the first and second lines of weakness (12) and the first and second lines of weakness (13) are overlapping.

### ***Response to Arguments***

7. Applicant's arguments filed August 15, 2005 have been fully considered but they are not persuasive.

8. In response to the Applicant's argument that: "the Applicants object to the Examiner's characterization of a slit as being a type of line of weakness or as being functionally equivalent to a line of weakness.", and the Applicant's argument go on saying that: "the Examiner's equation of a slit with a line of weakness also flies in the face of the definition of "structural weakness set for in Strand." (Strand, column 3, lines 36-50) and the Applicant's argument continues: "a slit cannot be deemed a line of structural weakness since it neither "creates a predetermined tear path" (since the slit has no material to tear) nor "provide[s] for evidence of tampering"." (emphases added),

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the examiner disagrees. The Applicant's argument is quite dramatic, but lack of persuasion, because it is contradicted to the Applicant's own disclosure. The Applicant's disclosure (page 8, lines 19-31 and page 9, lines 1-2) clearly pointed out that:

*"As seen in FIG. 1, the slits 20 are inclined ... Alternatively, lines of weakness may be employed in place of slits, provided that such lines of weakness yield easily when the consumer tries to tear the header open, ... Again, such a line of weakness may comprise a line of spaced slits, a line of spaced perforations, a continuous or discontinuous score-line of thinned header material, a continuous or discontinuous line of pre-weakened header material, or any equivalent structure for providing a line of preferential tearing."*

The examiner by no means using the Applicant's disclosure as prior art, but only to point out the contradiction in the Applicant's argument and also to demonstrate that Strand's reference has previously been disclosed the very same idea that a line of weakness may include any line that is intentionally designed to be easily torn by the user:

*"The term structural weakness is generally used to describe that area of the reclosable bag that is intentionally designed to be easily torn by the consumer ... the term structural weakness should include, without limiting its meaning, structures such as perforation, scores, microperforations, and multiple laminate materials which include a layer having an area of material or materials which are specifically designed to be easily torn." [Strand, column 3, lines 36-50; emphases added.]*

Moreover, Keller ('869), Deutschländer ('583) and Kopp ('997) all taught that a slit is intentionally designed to be easily torn by the consumer, and to assist and to facilitate a manual tearing-opening of a header of a bag. Accordingly, the use of the slit as a line of weakness is old and well known in the art.

**Conclusion**

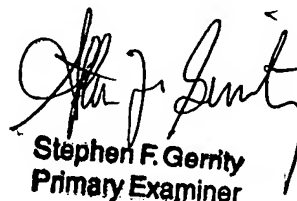
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tkf  
September 27, 2005.

  
Stephen F. Gerrity  
Primary Examiner